

HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.25099 OF 2004

Dated:14.12.2006

Between

The Special Commissioner & Director,
Survey Settlements & Land Records,
A.P., Hyderabad and two others.

.....
PETITIONERS

And

K.Krishna Rao

.....RESPONDENT

HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE RAMESH
RANGANATHAN

WRIT PETITION No.25099 OF 2004

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ORDER: *(per Hon'ble Sri Justice Ramesh Ranganathan)*

Heard both sides. Though the interlocutory matter is listed, at the request of the learned counsel appearing for both the parties, the writ petition is taken up for disposal.

Aggrieved by the order of the Tribunal, in O.A.No.1750 of 1999 dated 18.03.2004, directing the

petitioners herein to revise the pay of the respondent on par with his juniors, to issue necessary orders within three months from the date of receipt of the order and to suitably revise the pension and pensionary benefits of the respondent, the present writ petition is filed.

The respondent herein had earlier filed O.A.No.6917 of 1997 wherein he sought directions to the petitioners to consider his case in terms of various Government orders and instructions, and to re-fix his pay on par with his juniors. The respondent-applicant contended that he was appointed initially as a Junior Draughtsman on 20.07.1965 in the third respondent's office and had been continuously working till 08.07.1968 and that, thereafter, he was retrenched from service on 08.07.1968 and later on was re-appointed on 22.12.1977. The Tribunal, in its order dated 12.11.1997, took note of the Circular Memo dated 17.05.2003 issued by Finance and Planning Department, wherein the circumstances under which a senior would be eligible for re-fixation of pay on par with his juniors was specified. The Tribunal accordingly directed the petitioners herein to consider the case of the respondent-applicant for re-fixation of pay keeping in view the detailed instructions in Circular Memo dated 17.05.1993, and the proceedings of the Assistant Director (third respondent) dated 16.05.1996, and to pass appropriate orders on merits and in accordance with the

Rules.

The first petitioner herein passed the order dated 04.03.1999, wherein on a detailed consideration of the earlier facts, the order of the Assistant Director, Survey and Land Records, Guntur, dated 30.04.1991, directing that the period of former qualifying service at the time of retrenchment from 20.10.1965 to 08.07.1968 will be linked with the period of subsequent service but, however, the services would be regarded as continuous for the purpose of pension, was set aside on the ground that the Assistant Director had not quoted any rule in support of his order. The first petitioner herein rejected the representation of the respondent-applicant for re-fixation of pay. Questioning the said order, of the first respondent herein dated 04.03.1999, O.A.No.1750 of 1999 was filed before the Tribunal and as against the order of the Tribunal in O.A.No.1750 of 1999 dated 18.03.2004, the present writ petition is filed.

The Tribunal, on re-appreciation of the evidence on record, has passed the order referred to above. While elaborate submissions are made both by the learned Government Pleader for Services and Sri V.Padmanabha Rao, learned counsel for the respondent-applicant, we find considerable force in the submission of the learned Government Pleader that the Government

Memo dated 17.05.1993 is not applicable to the respondent-applicant inasmuch as the said memo applies only to Selection Grade posts and neither the respondent-applicant nor Sri B.Heeraman Singh and Smt S.Suvarchala, to whose pay the respondent-applicant was seeking stepping up, were appointed to Selection Grade posts. The fact, however, remains that neither the first respondent herein, in his order dated 04.03.1999, nor the Tribunal, in its order in O.A.No.1750 of 1999 dated 18.03.2004, has dealt with this aspect. The first petitioner herein, on the other hand, has proceeded on the presumption that since the Government memo dated 17.05.1993 was superceded by the subsequent memo dated 20.04.1998, no reliance could be placed on the earlier memo. The fact, however, remains that the earlier order of the Tribunal directing the petitioner herein to consider the case of the respondent-applicant, in terms of the Government memo dated 17.05.1993, was passed on 12.11.1997 i.e., prior to the date on which the subsequent memo dated 20.04.1998 came into force. Inasmuch as the contention now urged before us by the learned Government Pleader that the Government circular memo dated 17.05.1993 applies only to Selection Grade posts, and neither the respondent-applicant nor the other two employees, on par with whose pay the petitioner had sought for stepping up of his pay, were in Selection Grade posts, the petitioner was not entitled to place reliance on

the said G.O., has not been considered either by the Tribunal or by the first petitioner herein, we quash the impugned order of the Tribunal and the proceedings of the first petitioner herein dated 04.03.1999 and direct the first petitioner herein to reconsider the matter in accordance with law. We make it clear that any views which we may have expressed regarding the non-applicability of the Government Memo dated 17.05.1993 to the case of the respondent-applicant herein is only a *prima facie* view based on a cursory examination of the said memo. Any observations made by us in this regard shall not preclude the competent authority from independently examining the whole issue without being bound by any observations made by us in this order.

Sri V.Padmanabha Rao, learned counsel for the respondent-applicant, would submit that, while the petitioner had sought for stepping up of his pay, the first petitioner herein, on the other hand, had set aside the order dated 30.04.1991 of the Assistant Director, Survey and Land Records, Guntur, though the said order was not even under challenge. Learned counsel would contend that the finding recorded by the first petitioner herein that, as the order of the Assistant Director dated 30.04.1991 was without reference to rule it was liable to be set aside, was erroneous inasmuch as the said order of the Assistant Director dated 30.04.1991 was on the basis of

G.O.Ms.No.1002 dated 20.11.1967. Since the order of the first petitioner herein dated 04.03.1999 is being set aside in its entirety, it is wholly unnecessary for us to examine as to whether the first petitioner herein could have set aside the earlier order of the Assistant Director dated 30.04.1991 as having been passed without reference to any rule and whether or not the said order was in accordance with G.O.Ms.No.1002 dated 20.11.1967. Needless to state that, consequent upon the order of the first petitioner dated 04.03.1999 being set aside, the earlier order of the Assistant Director dated 30.04.1991 would revive.

The writ petition is accordingly disposed of directing the first petitioner herein to reconsider the case of the respondent-applicant in accordance with law, uninfluenced by any observations made by this Court in the present Writ Petition, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

B.PRAKASH RAO, J

RAMESH RANGANATHAN, J

14.12.2006
dr